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# No Simple Dichotomies: Lobbyists and the European Parliament

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To call lobbyists of the European Parliament 'unelected legislators' is somewhat misleading. Similarly, to talk of 'inspired legislation', where laws, or more particularly amendments to legislation, are 'written by a lobby group from the civil society and more or less rubber stamped by a public body'<sup>1</sup> is to over-simplify a complex and mediated relationship between elected 'legislators' and unelected 'interest representatives'. Indeed, in the case of the European Union (EU), identifying a single 'public body' as a 'legislator' is problematic in itself as all three major institutions – Commission, Council and European Parliament – perform legislative roles. Moreover, securing a single, clearly defined imprint of a 'rubber stamp' on legislation is difficult given the inter-institutional bargaining that results in blurred and smudged legislative imprints at the best of times.

What should be made clear at the outset of any discussion of lobbying in the EP, therefore, is that the effects of lobbying are contingent and not certain. They fluctuate in accordance with inter-institutional interactions, national interests, types of policy, types of legislation, as well as the style of lobbying, the coalitions formed around specific policies and the nature of resources deployed by lobbyists themselves. If, as Beate Kohler-Koch notes, the EP has become 'a decisive target for lobbyists' since the enhancement of its powers under the co-decision procedure, lobbyists in turn have had to 'cope with the institutional structure, the procedures and the policy style within Parliament'.<sup>2</sup>

Alongside any empirical assessment of the effects of lobbying is a parallel normative dimension of the promotion of sectional interests. Historically, most Western parliaments have been able to accommodate the representation of 'functional' or 'sectional' interests pragmatically alongside territorial, individualistic, or party notions of representation.<sup>3</sup> Yet the challenges posed by group representation to established conceptions of parliamentary representation have raised fundamental normative questions about the impact of 'interest representation' upon established liberal democratic decision-making processes in the EU and its member states.

These broader issues are raised elsewhere in this volume: what we are concerned with more specifically is the linkage between the 'unelected' representatives of organised interests and 'elected legislators' in the EP.

In order to highlight these normative and empirical issues the following discussion is structured in two sections. First, some broad observations about the interactions between lobbyists and MEPs are made; and, second, a detailed example, of the processing of the 'Tobacco' directive in 2000–2001, is provided to substantiate some of these general claims.

#### THE 'WHO', THE 'WHAT' AND THE 'HOW' OF LOBBYING THE EP

Exactly what constitutes 'interest representation' is the cause of heated academic debate but need not detain us here. All that needs to be noted is that the range of interests represented in Brussels is vast. It has been estimated that there are some 10,000 lobbyists in Brussels.<sup>4</sup> In terms of the number of active groups and organised interests, Simon Hix calculated that in the mid-1990s there were in excess of 1,600, with three main types: 561 individual companies with their own public affairs units, 314 'Euro groups', and 302 public affairs consultancies and law firms.<sup>5</sup> By 1998, however, Greenwood identified 700 'Euro groups', 200 firms with their own public affairs units, and 25 public affairs consultancies operating in the Belgian capital.<sup>6</sup> In addition, there were some 135 territorial authorities active in Brussels.<sup>7</sup> Both estimates are exclusively 'Brussels-focused' and do not take into account the wide range of national groups throughout the EU which also seek to influence EU policies in indirect ways. The most effective collectively organised interests and lobbyists know that 'Brussels is very much an insider's town'.<sup>8</sup> They are aware that knowing who to speak to, and when, are vital resources in the informal interpersonal and inter-institutional networks operating in the Belgian capital.

Certainly there are frequent interactions between MEPs and organised interests. Indeed, the indispensability of interest representation is pointed out by Kohler-Koch, who notes that because of MEPs' information deficiencies and time constraints 'they have to be open to lobbying'.<sup>9</sup> The sheer scale of interaction was revealed in one survey of MEPs in 1996 which discovered that some 67,000 contacts occurred between MEPs and interest groups each year.<sup>10</sup> A more recent survey of MEPs, in 2000, recorded that over half of MEPs had weekly contact with interest groups; and around a third had weekly interactions with lobbyists.<sup>11</sup>

#### *The Three Ts: Transmission, Translation and Timing*

'Interest representation' and 'lobbying' in parliaments are normally justified in terms of information transmission, translation and timing. The

transmission of information from interest organisations to MEPs is deemed essential as it provides pre-digested information for elected representatives who are often not experts in the particular policy area under consideration. This 'briefing' function also allows specific groups and organisations to translate often complex and technical information into accessible data for busy elected representatives. Indeed, as one Italian MEP noted, successful lobbyists supply 'information in ... a clear fashion so that the [MEP] doesn't have to be an expert in the field'.<sup>12</sup> In these interchanges the preferences of MEPs and lobbyists alike are for issue-specific briefings and the provision of detailed amendments at appropriate times. Of most use for both sides in the MEP-interest relationship is contact on 'issues of particular interest' and 'propositions for amendments to the directives under discussion'.<sup>13</sup> The clear preference in the EP is for direct, personal, well-timed and pertinent contact; with lobbyists providing targeted information on specific legislative amendments.

As important as transmission and translation of information, however, is the timing of its dissemination. The timing of the provision of information at the appropriate point in the EU's legislative cycle is a key resource of groups and lobbyists. Thus, Beate Kohler-Koch is in no doubt that: '[t]iming is considered to be most essential for successful performance' and that, in turn, the 'timing of interest representation is dominated by the procedural rules of EU-decision making'.<sup>14</sup> Certainly, with the extension of the co-decision procedure lobbyists have become increasingly aware of the need to 'act more quickly to get their views across to MEPs'. As Elaine Cruickshanks, Chief Executive Officer of the consultancy Hill and Knowlton International, notes 'players from the Council of Ministers and the Parliament are brokering deals much earlier under the codecision procedure'.<sup>15</sup>

Within the EP itself there is recognition of the intimate connection between substantive policy concerns and the procedural constraints and opportunities affecting the timing of influence. In this context, timing is particularly acute when amendments to Commission proposals are to be tabled in committee. Committees that have heavy legislative loads are especially colonised by representatives of organised groups and consultants. The sessions of the EP's Environment or Industry Committees, for example, regularly attract several hundred interest representatives. But the provision of information is not simply 'supply-led' but is also 'demand-led'. Committee rapporteurs, committee chairmen, vice-chairmen and shadow rapporteurs are particularly prominent 'targets' for the supply of information and, in reverse, are significant 'consumers' of information from outside organisations. Rapporteurs in drafting their reports routinely seek information not only from other EU institutions but also from interest

associations and lobbyists.<sup>16</sup> In addition, committee members often request draft amendments from interested organisations when the groups concerned have not already suggested their own favoured amendments. As a consequence, the process of amendment in committee is often characterised by intensive negotiation, dialogue and compromise not only among committee members but, crucially, between MEPs and affected interests across Europe.

### *Amendment Overload*

While the provision of detailed legislative amendments by lobbyists may be welcomed by busy MEPs in reducing their need to review complicated texts and draft amendments personally, one consequence of a preference for specific amendments is 'amendment overload'. It is not unknown for a single legislative proposal to attract up to 500 amendments in committee.<sup>17</sup> Indeed, the rise in the number of amendments tabled in Parliament, and the increased time-costs associated with voting, has resulted in electronic voting becoming more widely used in EP committees. Such time pressures, in turn, led to Parliament's 2002 Rules of Procedure further limiting the possibilities to table amendments in plenary.<sup>18</sup>

Of course, the tabling of amendments does not necessarily ensure their adoption when voted on. Nonetheless, the fact remains that interest representatives are currently responsible for the initial drafting of a very high proportion of the amendments tabled in Parliament's committees. Informed estimates put this in the region of 75 to 80 per cent in the most active legislative committees. More generally, few insiders would contest the fact that, even in the absence of specifically drafted amendments, the inspiration behind individual legislative (and other) amendments often flows from outside the EP.

The sheer complexity of processing amendments should not be underestimated, with each amendment having to be translated into 11 languages, distributed to all committee members, and then voted on, or a compromise brokered. This process is complicated still further in instances (frequent in practice) of overlap between individual amendments, and of multiple amendments to individual articles and paragraphs of proposals and to draft reports. Moreover, duplication of tabled amendments is a common phenomenon, with different MEPs, even from different party groups, submitting identical amendments.<sup>19</sup> Besides the embarrassment factor in such cases, it is thus apparent which MEP has been successfully influenced by which interest. As one Commission official responsible for steering a legislative proposal through the EP remarked to one of the authors in June 2002: 'the latest sport in the Commission is to identify which group or company drafted which amendment'.

This does, of course, raise the intriguing normative question of whether such amending capacity is necessarily 'sinister' or 'anti-democratic'. The answer to this question lies beyond the scope of this particular article. Nonetheless, MEPs can, and do, defend their tabling of amendments, generated outside Parliament, as attesting to their responsiveness to societal demands rather than as evidence of their domination by unelected interests. They would also contend that each amendment has not simply to be tabled, but also presented, justified, argued, frequently compromised, and only then voted on in Parliament's committees or plenary. Amendments are often subject to intense controversy, with votes on individual amendments in committee frequently being more contested than the final vote in committee or plenary.

#### *Inter-institutional and Intra-institutional Intelligence*

MEPs and interest representatives trade not only substantive information on policies but also exchange 'inter-institutional' information. The reciprocal trading of information on the thinking and scheduling of legislation within the Commission or Council is a vital commodity in the MEP–lobbyist relationship. Of particular currency in this exchange is intra-institutional information on the work patterns of, and rate of legislative progress in, the various parliamentary committees engaged in processing specific directives. Representatives of interest associations and lobbyists often provide informal monitoring for MEPs of the asymmetries of committee activity on a particular directive. They track the different deadlines imposed by the various committees for the tabling of amendments; variations in the speed of processing proposals across committees; and possible divergences of policy emphases in the different committees dealing with the same issue. In this way, interest groups with a mastery of the EP's procedural complexities and a developed surveillance capacity provide not only substantive policy briefing but also inter- and intra-institutional intelligence for MEPs.

#### *Hearings*

The capacity of the EP to gain (and disseminate) information has been enhanced through the procedure of public hearings. Such hearings are convened by the EP's committees with the permission of the Bureau.<sup>20</sup> The purpose of hearings is to invite experts and interested organisations to provide evidence and engage in structured dialogue with committee members. Representatives of the Commission and Council attend the hearings, and the Commission is frequently invited to respond to the views expressed during the course of the hearing. In 2000, 17 hearings were convened, and 25 hearings were held in 2001. Indeed, in the first four

months of 2002, 15 hearings were held and ranged across topics such as tobacco advertising and sponsorship, the future of European tourism, and sport and audiovisual rights.

The main advantages of public hearings are that they help committee members to familiarise themselves with a particular policy (either in terms of detail or the broader context). One dimension is that they provide a procedure whereby MEPs can engage in 'exploratory dialogue' and 'forward thinking' and so raise issues for consideration by the other EU institutions. Another dimension of hearings is that they provide MEPs with supplementary sources of advice and information from independent experts, organised interests and non-governmental organisations (NGOs) with which to assess the outcomes of the Commission's own pre-legislative consultations. Thus, for example, the hearing on tobacco advertising and sponsorship in April 2002 included speakers from public health interest groups (the Standing Committee of European Doctors, the European Cancer Leagues and the European Heart Network), from the tobacco industry (Imperial Tobacco, the Italian Association of Tobacco Producers and GITES), as well as from academic experts and the recipients of tobacco sponsorship.

### *Intergroups*

'Intergroups' are unofficial groupings of MEPs who share a common interest in a particular cause or interest. With the exception of the intergroup of Elected Local and Regional Representatives no other intergroup has formal status within the EP. Despite the 'unofficial' nature of these groups some 100 were in existence in 2000.<sup>21</sup> There is such diversity among intergroups in terms of size, membership, frequency of meetings, links with political groups and outside interests that it is difficult to make generalised statements about their activities.

Nonetheless, Corbett *et al.* list the benefits of intergroups for the EP as enabling MEPs to focus on a 'particular set of issues of specific national, constituency or personal concern', to specialise, to make contacts with outside interest groups on an informal basis, and to facilitate political contacts outside their own political groups.<sup>22</sup> There are, however, also certain disadvantages associated with intergroup activity. Indeed, concern with the operations of a few intergroups and their close connections with outside lobbies led the Conference of Presidents in 1995 to ratify an agreement to reaffirm and underline the unofficial status of such groups. Intergroups were expected to make clear that they were not organs of the EP, they did not speak on behalf of Parliament, and they could not use the EP's logo or its official title in any communications or printed materials. Specific rules were also drafted in the same year to bring intergroups into line with the rules concerning lobbyists and the declaration of financial interest of

MEPs and their assistants. In 1999 further restrictions were placed on the creation of intergroups when they were required to have the support of party group leaders before they could be constituted.

In addition to the concerns that some groups merely served as a 'front' for certain organised interests, there was also concern that the sheer scale and activism of intergroup networks constituted 'a rival centre of attention to official parliamentary activities, and in certain circumstances may undercut the latter'.<sup>23</sup> Thus, on occasion, the clash of timing of intergroup meetings with official parliamentary committee meetings and plenary debates has adversely affected attendance at the latter. Similarly, outside speakers occasionally quibble at attending committee meetings after appearing at intergroup sessions.

#### *The 'Institutional Lobbyists'*

In addition to 'mainstream' lobbying by interest representatives, the 1990s also witnessed a dramatic increase in the lobbying of the EP by the Commission and national governments (including third country governments). In recognition of the EP's enhanced legislative capabilities in that decade, the Commission and national governments acknowledged the necessity of maintaining a dialogue with appropriate MEPs.

The characterisation of national and Commission officials as 'lobbyists' in the context of EU decision-making is certainly not new. In 1993, for example, David Spence identified the national official as 'clearly a lobbyist of European institutions and other Member States' officials'.<sup>24</sup> Within the EP, Ken Collins, then chair of the Environment Committee, in his address to the hearing organised by the Rules Committee into lobbying in 1992, noted the difficulties in defining lobbyists. He argued that, as far as the EP was concerned, a definition should include not only 'delegations of the Council' but also 'Commission officials defending their proposals vis-à-vis Members and parliamentary committees ... representatives of local and regional authorities and representatives of third countries'.<sup>25</sup> Thus, while the depiction of national officials as lobbyists is not new, the greater attention paid by them to the EP is relatively new. Whereas over a decade ago Spence devoted just one short paragraph to the role of the UK permanent representation in Brussels in following EP affairs, such a cursory treatment would be unlikely in the 2000s.

EU governments willingly provide policy briefings to their own national delegations in the EP. One EP committee chairman, in interview in the 1994–99 Parliament, observed that: 'My permanent representation – the Dutch – is giving us a lot of good briefing, written briefings, so I have good information about what's on the agenda; about what is the opinion of my own country'.<sup>26</sup> Traditionally, and as confirmed by this MEP, much national



briefing was essentially formal, taking the form of written memoranda outlining the view of national administrations on Commission proposals, or on parliamentary reports once tabled for the EP's plenary.<sup>27</sup> What has changed in recent years, however, is that national officials and politicians have started to seek to influence EP proceedings more intensively, at an earlier stage, and in tandem with their evolving position in the Council of Ministers. There is also a recognition that national governments should provide tailored briefings for committee rapporteurs, other key committee actors, constituency MEPs, committee members and, ultimately, all MEPs in the run-up to plenary, together even with a voting list 'so that those who agree with your position overall know how to vote for it in detail'.<sup>28</sup>

Moreover, it is not unusual for individual permanent representation officials to suggest legislative amendments to their respective national MEPs in committee. Invariably these amendments parallel current national negotiating positions in the relevant working group of the Council. In this sense, national officials have started to intertwine themselves firmly into the pattern of interest representation within the EP. In addition, officials of the permanent representations sometimes also operate *collectively* in seeking to influence the EP, particularly as a result of co-decision. To this end, permanent representation attachés, who are responsible for relations with the EP, meet before each plenary session to co-ordinate their positions and identify targets for direct lobbying. Obviously, at this stage, national officials will reflect primarily the position arrived at in Council. Such lobbying may be intensive. In the run-up to the EP's vote on the Members' Statute in May 1999 (a vote which ultimately went against the view of Council), one of the permanent representation parliamentary attachés commented to one of the authors that he had 'done nothing for a month but lobby the Parliament on the members' statute'.

One recent, and dramatic, example of the significance of 'institutional lobbying' of the EP was provided by the 'Takeover Bids' directive. This directive (formally titled: 13th directive on Company Law, Concerning Takeover Bids) was rejected by the EP's plenary after agreement in the conciliation committee. It was the first rejection of a joint text under the codecision<sup>2</sup> procedure. It was also the first rejection after a tied plenary vote of 273 in favour 273 against and 22 abstentions. Indeed, the high level of participation in the vote – with 568 MEPs voting – was itself unique. However, neither the details of the proposal, nor indeed of its passage through the EP,<sup>29</sup> are the focus of attention here. Instead, what is of importance is that the directive constituted the first co-decision procedure during which a member state dissented openly and assertively and decisively from a previously agreed Council common position – *and sought explicitly a parliamentary rejection*.

After reaching agreement in Council in June 2000, the German government subsequently withdrew its support in early 2001. The change of position came after intense lobbying of Chancellor Schröder by senior executives of German companies, especially VW and BASF, along with the head of the Mining, Chemical and Energy Workers' Union.<sup>30</sup> Once the German government had dissociated itself from the common position then the process of conciliation became extremely complicated. At third reading, after intense lobbying of German MEPs – by the German government, leading German companies and trade unions – they voted overwhelmingly as a single national bloc irrespective of EP party group. As the *Financial Times* noted: 'In a rare display of unity, the German government and opposition, along with leading business associations and trade unions all welcomed the vote.'<sup>31</sup> Conversely, Frits Bolkestein, the Commissioner with responsibility for the 'Takeover' directive, had no doubts that the blame for failure rested 'squarely on Germany'.<sup>32</sup>

In this case, a national government, in conjunction with national interest organisations and national MEPs, was instrumental in securing the rejection of EU legislation. What is particularly significant for the present discussion is how the simple dichotomisation of roles between 'elected' and 'unelected' legislators becomes more convoluted in the case of the 'Takeover' directive. Indeed, the actions of 'directly elected EU-level and EU-wide legislators' (MEPs) can be counterposed by the actions of 'directly elected national representatives' (the German Council delegation) who, in turn, constitute 'indirectly elected EU legislators'. More significantly, and more contentiously, such national 'institutional lobbyists' may be designated as 'unelected EU-level and EU-wide legislators' in the immediate and literal sense that they do not have an EU-wide electoral mandate. But this is to get ahead of the argument. Let us first of all examine the respective contributions of 'elected' and 'unelected' legislators to the processing of the 'Tobacco' directive.

#### AN ILLUSTRATIVE EXAMPLE

Much has been written on lobbying within the EP, but there remains relatively little detailed research on the phenomenon.<sup>33</sup> One fairly common assumption is that the 'EP attracts a disproportionate amount of lobbying from certain groups (environmentalists, women, consumers, animal rights)'.<sup>34</sup> Yet offsetting this assumption is a growing recognition of the extensive involvement of business and corporate interests in the legislative activities of the EP.<sup>35</sup> Perhaps it is safest to conclude, therefore, that 'few interests dare risk leaving the parliamentary arena to their opponents, and hence [the EP] ... attracts the full melange of stakeholders'.<sup>36</sup> To illustrate this point, the

following study of the passage of the Tobacco labelling directive in 2000–2001 reveals both the intensity of lobbying and the differential and mediated effect of lobbying. Determining exactly which interests were winners and which were losers presupposes that bargaining in the EP is a zero-sum game. In practice, however, it may be a positive-sum game.

### *The 'Tobacco' Directive*

The 'Tobacco' directive (formally entitled the Directive on the Approximation of Laws, Regulations and Administrative Provisions of Member States concerning the Manufacture, Presentation and Sale of Tobacco Products)<sup>37</sup> was submitted by the Commission to Parliament in January 2000. The lobbying of the tobacco industry and health activists was an important part of the processing of the proposal, as was informal interinstitutional contact, and the 'anticipatory' behaviour of MEPs.<sup>38</sup>

The complexity, as well as the political significance, of the issue was revealed in the nuanced process of lobbying by different organised interests and associations. Indeed, it is worth making a few broad observations about the development of the 'health lobby' before examining the details of the tobacco labelling case study. At one end of the lobbying spectrum are the 'health activist' groups. These include organisations such as the European Public Health Alliance, the Association of European Cancer Leagues and Medecins sans Frontiers. Most recently, patient organisations have started to have an impact in Brussels (such as European Patients Voice) as well as bodies representing patients with specific diseases (such as Alzheimer Europe, or Gamian, a group focused on mental illness). Certainly there has been a dramatic growth of such health activist groups over the last decade.

Ranged alongside 'health activist' groups are the representatives of specific healthcare sectors: such as healthcare insurance bodies – the Association Internationale des Mutualité (AIM); pharmacists (the Pharmaceutical Group of the European Union; pharmaceutical wholesalers, the Groupement International de la Répartition Pharmaceutique Européenne (GIRP); doctors (the Standing Committee of European Doctors, and national organisations such as the BMA, which has had a permanent Brussels representation since the late 1990s); and healthcare managers (the European Health Management Association). Again, the healthcare sector has a much more visible and active representative presence in the EP than a decade ago.

At the other end of the spectrum are industry representatives. A particular feature of the lobbying process on the tobacco directive was the entry of the pharmaceutical industry into the debate, and its adoption of a moderately progressive stance in support of the case of health activists. (In part, this was not simply altruism, as some benefit would also accrue from the promotion

of their own smoking prevention products.) Numerically, the EU 'health' lobby remains dominated by the pharmaceutical industry. Certainly, the industry has taken care to interpose itself into parliamentary networks. Thus, for example, the pharmaceutical industry's trade association, the European Federation of Pharmaceutical Industries and Associations (EFPIA) has employed a dedicated parliamentary affairs manager since the early 1990s. Moreover, since the mid-1990s, individual pharmaceutical companies represented in Brussels (as most are) stand out among the corporate sector in recruiting EP specialists to staff their Brussels government affairs representative offices. Today, the industry's representatives and its consultants form their own veritable mini-colony at the rear of Parliament's Environment Committee during discussions of pharmaceutical licensing and other legislative proposals relating to the sector.

Counterposed against these 'health lobbyists' were the representatives of the tobacco companies. But it should be acknowledged from the outset that there was no single, cohesive and overriding industry perspective on the tobacco directive. In fact, some of the very largest tobacco companies (such as Philip Morris) adopted a more positive position to the directive than did the smaller companies. At one level, the largest companies identified certain features of the EU's tobacco legislation – relating to packaging, labelling and advertising – as a potential means by which to maintain their current market shares indefinitely. Moreover, Swedish manufacturers of Snus (Scandinavian oral tobacco) sought to use the proposal to lobby against the impending ban on their product. In Sweden, the banning of Snus featured regularly as part of the ongoing discussions about the country's membership of the EU.

Given the sheer range of organisations with an 'interest' in the tobacco labelling directive, it is perhaps not surprising that the EP's rapporteur sought to structure lobbying through the convening of collective meetings of the different groups involved. This highlighted not only the range of interests, noted in the preceding paragraphs, but also the differences within and between different groups involved in the tobacco issue. The differences in the lobbying styles and organisational structures adopted by these groups was greater than their similarities.

#### *The EP's Processing of the Proposal*

The prime objective of the Commission's proposed directive was to combine and revise three existing directives on the tar content of cigarettes, oral tobacco and labelling of tobacco products. Indeed, the fingerprints of the Association of European Cancer Leagues are clearly discernible on the Commission's draft proposal. The main provisions of the directive included a reduction in the tar content of cigarettes; harmonisation of ceilings for

levels of nicotine and carbon monoxide; more stringent requirements concerning the size and type of health warnings on tobacco packets; an obligation on manufacturers and importers to list additives, to explain the reason for such ingredients and to provide toxicological data on additives; a ban on misleading descriptors such as 'light' and 'low tar'; and new review and reporting procedures on the implementation of the directive. Despite the apparently technical nature of these issues, it is important to place the proposal in the political context of increasing concern in Europe over smoking and health.

The Commission's proposal was referred to the Committee on the Environment, Public Health and Consumer Policy as the committee responsible, and opinions were sought from the Legal Affairs, Industry and Agriculture Committees. Jules Maaten was appointed rapporteur on 26 January 2000 and the EP adopted his report in its first reading vote on 14 June 2000. Some 44 amendments were adopted at first reading.

In essence, Maaten and the Environment Committee maintained the EP's long-standing support for the Commission's preference for the strict regulation of tobacco products in Europe. Although most of the first reading amendments might readily be classified as 'technical' in nature, in fact many went to the heart of how tobacco products should be regulated in Europe, how tobacco is perceived, and followed an approach considerably at odds with that favoured by most of the tobacco industry. Significantly, in this case there was also an important political motivation underlying the Environment Committee's pursuit of what might be perceived by 'outsiders' as a search for technical perfection rather than political impact. This was simply that the tobacco industry had become an enthusiastic litigant against EU tobacco legislation. (Indeed, the directive resulting from Maaten's report was subject ultimately to three legal challenges.) MEPs were conscious, therefore, that amendments designed to maximise the health objectives of tobacco legislation would precipitate a legal challenge from the tobacco companies on the grounds that the limits imposed by the internal market legal base (Article 95) had been exceeded. This 'anticipation of future action against legislation' was evident in the arguments advanced by the rapporteur and other Environment Committee members. The 'anticipatory' logic was also apparent in Parliament more widely, as well as within the Commission and Council. Institutionally, if health objectives were explicitly advanced, decision-making in Council would have to have been by unanimity rather than QMV – to the detriment of the stringency of the measure likely to result. In turn, unanimity in Council would have led to dilution of the proposal by the most reluctant member states (Germany and Greece). As it was, Germany not only voted against the common position in Council but also launched a case in the Court of Justice against Council and Parliament's adoption of the measure.

The Commission accepted the majority of the EP's first reading amendments 'in whole or in part', in some cases subject to drafting modifications, and included them in its amended proposal. This was hardly surprising as the rapporteur had informally discussed his proposed amendments at length with relevant Commission officials. Indeed, from the start of the EP's processing of the proposal, the rapporteur also maintained close contacts with successive Council Presidency officials responsible for the dossier in the Council's working group. In fact, the Parliament's rapporteur undoubtedly acquired both a detailed knowledge and a strategic vision at least equal to that of member state officials in the Council's working group. If anything, the EP's rapporteur was placed in a possibly advantageous position in relation to his Council interlocutors, because, unlike the Council Presidency which changed every six months, the rapporteur was able to develop a longer-term perspective on the issue. (Indeed, there were four Council Presidencies during the processing of this proposal, and the rapporteur had to liaise successively with each.)

Of the amendments taken up by the Commission, only 15 were accepted wholly or in part by the Council. However, two of the EP's amendments that had not been accepted by the Commission were adopted. These related to the use of terms such as 'low tar', 'light' or 'mild' as product descriptions suggesting that a tobacco product was less harmful than others. In its consideration of the common position, the Environment Committee proposed the re-adoption of many of its first reading amendments. Included among the reintroduced amendments was one to require the reporting of test results after a deliberate change to a tobacco blend, rather than through an annual reporting system. On the issue of warnings, the EP favoured labelling which conveyed a 'serious message rather than simplistic slogans'<sup>39</sup> but was willing to compromise to take account of the reduced size of warnings. Parliament's desire to have larger warnings arose from an acceptance of research findings that the most direct medium for the communication of the dangers of smoking was the cigarette packet itself.<sup>40</sup> Moreover, the EP inserted a new paragraph enabling member states to require colour photographs or other illustrations of the health consequences of smoking to be displayed as part of the warning. This was modelled on the Canadian style of regulation. On this point the Environment Committee succeeded in stretching – or at least interpreting creatively – Parliament's own Rules of Procedure sufficiently to introduce amendments to the common position that had not been adopted at first reading. This was attributable, at least indirectly, to lobbying conducted by representatives of Health Canada who, in meetings with MEPs in Brussels, pointed specifically to the effect of earlier Canadian legislation which, notably, required the labels of cigarette packets to carry strong graphic images intended to deter smoking.

To maximise the effects of these general and additional warnings, the first reading amendment was reintroduced to require such warnings to be displayed on tobacco vending machines as well. Parliament also reintroduced its amendment on the harmonisation of testing. Similarly, the amendment requiring the Commission to submit a proposal (by December 2004) for a directive providing for a common list of authorised ingredients (and their addictiveness) for tobacco products was reintroduced.

Throughout the process proponents of strict regulation worked closely with MEPs. As Warleigh observes, relations between lobbyists and policymakers *'can be so strong that NGOs are seen by some institutional actors not as lobbyists but as colleagues* able to supply information otherwise unavailable through their participation in formal consultation with actors from other institutions'.<sup>41</sup> This was certainly the case for the proponents of the strict regulation of tobacco products as they fed MEPs information relating to practices in third countries in support of their arguments, and, more specifically, drafted amendments and provided substantiating arguments for supportive MEPs.

In considering the EP's amendments, the Commission took into account the Court of Justice's ruling, of 5 October 2000,<sup>42</sup> annulling the directive on tobacco advertising.<sup>43</sup> The annulment of the tobacco advertising directive, effectively on the grounds that it exceeded the possibilities available under Article 95 for the EU to act against tobacco advertising, was a constant backdrop during the adoption of the tobacco labelling proposal, and became particularly important during the proposal's second reading.

At second reading a total of 32 amendments were adopted by Parliament. Of these the Commission accepted 22 and modified its proposal accordingly. Council announced that it was unable to approve all the amendments and, accordingly, conciliation followed. After six and a half hours of intense negotiations an agreement was reached at the concluding meeting held on 27 February 2001. Agreement was facilitated by the intensive inter-institutional interactions that had occurred at earlier stages of the process,<sup>44</sup> and by the prior meetings of the EP's delegation and the trialogue held with the Swedish presidency and the Commission on 6 February 2001.<sup>45</sup> Indeed, in the trialogue the Council accepted 12 amendments and presented compromise texts for some others.

The main issues for consideration in conciliation, therefore, included the nature of health warnings, prohibition of misleading descriptors, the use of photographs and illustrations, the list of ingredients, and a transitional period for exported tobacco products. Compromises were reached on all of these issues. At this stage, the proponents of tight controls on tobacco made available to the Conciliation Committee (and to all 626 MEPs) Canadian cigarette packets (which were empty!) to demonstrate that strict regulation

of the labelling of tobacco products was entirely practical and, indeed, was already in force elsewhere. This provided a clear example of issue-specific coalition formation, where the key to influence was marginal advantage and certainly not shared values among groups.<sup>46</sup> Thus, for example, the financial cost of shipping and distributing the cigarette packs to all MEPs was met by a major pharmaceutical company; yet the accompanying letters were drafted and signed by health activists (transparently declaring pharmaceutical company support). Certainly on many other issues such activists have shown their hostility to the promotion of the interests of pharmaceutical companies.

The outcome of the conciliation process was judged by the EP's rapporteur to be that 'the agreement reached is an excellent one which goes well beyond what was possible before its second reading'.<sup>47</sup> On health warnings the message was strengthened and the size of health warnings was agreed on the basis of a Commission compromise. The possibility of member states authorising the use of photographs and other graphic material on cigarette packets was conceded and the Commission (much against its own will) was given the task of adopting appropriate rules by December 2002. Agreement was also reached that the descriptors 'mild', 'light' or 'low tar' were to be prohibited. (One result of this provision was that Japanese Tobacco, manufacturers of 'Mild Seven' cigarettes – whose brand and trademark were effectively outlawed in Europe – launched a Court of Justice case against the EP and Council.)

Tobacco companies were to be obliged to submit to authorities in the member states an annual list of the ingredients found in their products, and the Commission was to initiate a proposal, by the end of 2004, for a list of all ingredients authorised for tobacco products. Compromise was reached on the issue of a transitional period (until 2007) for exported tobacco products to meet the tar and nicotine ceilings as products marketed in the EU. The tobacco industry (especially from the UK) had mounted a highprofile, and in the end quite effective, lobby on the transitional period. Lobbying focused overwhelmingly on the potential threat to employment as a result of the adoption of this provision. In particular, a targeted campaign, ostensibly led by workers and their trade unions in the tobacco industry, was directed at MEPs with cigarette factories in their constituencies. Coalition formation, in this case between employers and employees, and their trade unions, was again based on short-lived common interests, and was again successful. In addition, the position of MEPs was moderated by a recognition that legislation banning the export of high-tar cigarettes from the EU might contravene World Trade Organisation rules.



## CONCLUSION: NO SIMPLE DICHOTOMIES

The reciprocal transmission of information from organised interests to MEPs, and the subsequent enhancement of the informational resources within the EP, has many benefits. Nonetheless, there remains a deep-seated concern that 'reconciling the demands of self-interested private interests with the wider interests of civil society [is] a central problem of democratic life'.<sup>48</sup> Historically, interest representation has been regarded as a particular 'problem' for parliaments. Elected assemblies have institutionalised the norms of the equal status and voting weight of individual representatives, and the transparency of deliberation. In practice, however, the interactions between organised interests and elected representatives often reflect inequalities of access to, and provision of, information; and translucent rather than transparent bargaining. In these circumstances, fears about the representation of 'sinister interests', to use John Stuart Mill's phrase,<sup>49</sup> are articulated and demands for regulation emerge.

Just such fears and demands emerged after the introduction of direct EU elections to the EP in 1979 and have increased with each successive increment in the EP's legislative powers. In an environment in which MEPs 'retain close links with particular sectors or interest groups which will help to condition their choice of priorities',<sup>50</sup> what concerns MEPs and outsiders alike is just how close these links are, and what kind of resources and incentives are used to 'condition the choice of priorities'. These concerns over the unregulated activities of lobbyists led to a seven-year campaign for the regulation of lobbying and lobbyists in the face of accusations that the voting independence of a small number of MEPs had been impaired by their pecuniary involvement with outside interests.<sup>51</sup>

The culmination of this campaign, and of exceedingly protracted deliberations, was the amendment of the EP's Rules of Procedure in 1996 – and the insertion of a new annex in 1997 (Annex IX) – on lobbying in Parliament (Rule 9).<sup>52</sup> The main purpose of the 1996 rule changes was to make the activities of interest representatives more transparent by establishing a public register of lobbyists. Henceforth, lobbyists were required to respect a code of conduct and sign a register that was to be made available to the public on request. In return, lobbyists were to be granted a photo ID access pass to Parliament's buildings, obviating the need to be 'signed in' to the building or to be accompanied therein. Also in 1996 rules were adopted to monitor the 'interests' of MEPs themselves.<sup>53</sup> Clearly, through these rules the EP and its members recognise the potential dangers of the 'unelected' representatives of sectional interests promoting those interests over and above an EU 'general interest' articulated by elected legislators. In practice, however, the simple dichotomy between 'elected' and 'unelected' legislators is blurred by the indirectly elected status

of the Council and its national delegations and the 'unelected' status of the Commission itself. Yet, in the context of the EP's legislative process, these institutions constitute external 'institutional lobbyists'.

If the simple divide between 'elected' and 'unelected' legislators is more problematic than at first appears, so the notion of 'legislator', as expressed in the introduction of this volume, also proves to be contentious. It is one thing to argue that lobbyists and interest representatives contribute to the legislative process and that 'public legislation comes in many different forms and from many different sources'. It is another, however, to argue that the legislative impact of lobbyists is necessarily unmediated, direct or even unidirectional. This is not to deny that lobbyists can and do write specific legislative amendments, or that MEPs actively seek such amendments (or non-legislative interventions from lobbyists – such as questions). Instead, it is to note that precisely because legislative interventions derive from 'many different sources' the notion that elected representatives merely rubber stamp the interjections of lobbyists should be questioned. As the example of the tobacco directive illustrates, there are often competing and occasionally overlapping coalitions of 'unelected' interests aligned with different constellations of elected representatives. Moreover, there is no unambiguous normative correlation between 'elected-equals-good' and 'unelected-equalsbad'. In the case of the 'tobacco' directive, some business interests (a pharmaceutical company) co-operated with health groups (good?) while others (some workers' organisations) co-operated with Tobacco companies (bad?). In turn, some MEPs, in representing the interests of their electors and their sustained employment in the tobacco industry (good?), did so by supporting the case of tobacco companies (bad?). None of these statements should be taken as normatively categorical assessments. Instead, they simply point to the complexity of the processing of legislation within the EP and to the multi-dimensionality of EU decision-making. In these nested dimensions the normative certainties of 'good' and 'bad' – commonly associated with the adjectives 'elected' and 'unelected' – have to be re-examined, as, indeed, does the very concept of 'legislator' itself.

#### NOTES

1. R. van Schendelen and R. Scully, 'Introduction', this volume, p.4.
2. B. Kohler-Koch 'Organised Interests and the European Parliament', *European Integration online Papers*, 1/9 (1997); [eiop.or.at/eiop/texte/1997-009a.htm](http://eiop.or.at/eiop/texte/1997-009a.htm), p.5.
3. See D. Judge, *Representation: Theory and Practice in Britain* (London: Routledge, 1999), pp.97–120.
4. *European Voice*, 17–23 Feb. 2000, p.8.
5. S. Hix, *The Political System of the European Union* (London: Macmillan, 1999), p.192.
6. J. Greenwood, 'Regulating Lobbying in the European Union', *Parliamentary Affairs*, Vol.51 (1998), p.587.

7. J. Greenwood, *Representing Interests in the European Union* (London: Macmillan, 1997), p.9.
8. Greenwood, *Representing Interests in the European Union*, p.5.
9. Kohler-Koch, 'Organised Interests and the European Parliament', p.6.
10. B. Wessels, 'European Parliament and Interest Groups', in R.S. Katz and B. Wessels (eds.), *The European Parliament, the National Parliaments, and European Integration* (Oxford: Oxford University Press, 1999), p.109.
11. R. Scully and D.M. Farrell, 'Understanding Constituency Representation in the European Parliament' (paper presented at the Conference of the European Community Studies Association, Madison, 31 May–2 June 2001), Table 4.
12. Quoted in Burson-Marsteller, *Guide to Effective Lobbying of the European Parliament* (Brussels: BKSJ, 2001), p.19.
13. Kohler-Koch, 'Organised Interests and the European Parliament', Figure 5.
14. Kohler-Koch, 'Organised Interests and the European Parliament', p.9.
15. Quoted in *European Voice*, 17–23 Feb. 2000, p.8.
16. See D. Judge and D. Earnshaw, *The European Parliament* (London: Palgrave, 2003).
17. For example, the proposed creation of a European Food Agency in 2001 (COD 2000/0286) garnered nearly 500 amendments in the Environment Committee; the review of EU pharmaceutical legislation (COD 2001/0252 and COD 2001/0253) during 2002 generated over 700 amendments to two legislative proposals.
18. Rule 110a requires Committee reports adopted with less than one-tenth of Committee members voting against to be placed on the plenary agenda for vote without amendment, unless political groups or individual members constituting at least one-tenth of MEPs request otherwise, in writing. Rule 139.1 requires amendments tabled in plenary to be tabled by the committee responsible, a political group or at least 32 members. European Parliament, *Rules of Procedure*, Amended Text, Provisional edition, July 2002 (Brussels: European Parliament, 2002).
19. For example, identical amendments were tabled in the Industry Committee by Liberal, Christian Democrat and Socialist MEPs in support of tobacco company interests, delaying a ban on the export of high-tar cigarettes (see the second section of this article).
20. European Parliament, *Rules of Procedure*, Rule 166, interpretation.
21. *European Voice*, 6–12 April 2000, p.24; for an indicative list see R. Corbett, F. Jacobs and M. Shackleton, *The European Parliament* (London: John Harper, 4th edn., 2000), p.165.
22. Corbett *et al.*, *The European Parliament*, p.158.
23. Corbett *et al.*, *The European Parliament*, p.158.
24. D. Spence, 'The Role of the National Civil Service in European Lobbying: The British Case', in S. Mazey and J. Richardson (eds.), *Lobbying in the European Community* (Oxford: Oxford University Press, 1993), p.47.
25. PE 155.236, 'Notice to Members', Committee on the Environment, Public Health and Consumer Protection (Brussels: European Parliament, 1992), Annex i.
26. Quoted in D. Earnshaw and D. Judge, 'The Life and Times of the European Union's Cooperation Procedure', *Journal of Common Market Studies*, Vol.35 (1997), p.555.
27. See also J. Humphreys, *Negotiating in the European Union* (London: Random House, 1997).
28. Humphreys, *Negotiating in the European Union*, p.200.
29. For such details, see Judge and Earnshaw, *The European Parliament*.
30. *Financial Times*, 6 July 2001.
31. *Financial Times*, 6 July 2001.
32. *Financial Times*, 5 July 2001.
33. Exceptions include A. Warleigh, 'The Hustle: Citizenship Practice, NGOs and "Policy Coalitions" in the European Union – The Cases of Auto Oil, Drinking Water and Unit Pricing', *Journal of European Public Policy*, Vol.7 (2000), pp.229–43; Kohler-Koch, 'Organised Interests and the European Parliament'.
34. S. Mazey and J. Richardson, 'Interest Groups and EU Policy-Making: Organisational Logic and Venue Shopping', in S. Mazey and J. Richardson (eds.), *European Union. Power and Policy-Making* (London: Routledge, 2nd edn., 2001), p.229.
35. For example, see D. Earnshaw and J. Wood, 'The European Parliament and Biotechnology

- Patenting: Harbinger of the Future?', *Journal of Commercial Biotechnology*, Vol.5 (1999), pp.294–307; P. Bouwen, 'Corporate Lobbying in the European Union: The Logic of Access', *Journal of European Public Policy*, Vol.9 (2002), pp.365–90; C. Burns, 'More Power Not Less? The European Parliament and Codecision' (unpublished Ph.D. thesis, University of Sheffield, 2002)
36. Mazey and Richardson, 'Interest Groups and EU Policy-Making', p.230.
37. COD 1999/0244, Directive on the Approximation of Laws, Regulations and Administrative Provisions of Member States concerning the Manufacture, Presentation and Sale of Tobacco Products (Brussels, 1999).
38. 'Anticipatory' in the sense of identifying what was possible in legal terms so as to ensure that legislation was not killed later by litigation on the part of the tobacco industry.
39. PE 293.679, Recommendation for Second Reading on the Council Common Position for Adopting a European Parliament and Council Directive on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning the Manufacture, Presentation and Sale of Tobacco Products, Committee on the Environment, Public Health and Consumer Policy (Brussels: European Parliament, 2000), p.27.
40. PE 293.679, Recommendation for Second Reading on the Council Common Position, p.27.
41. Warleigh, 'The Hustle', p.235, emphasis in original.
42. C-376/98, Judgment of the European Court of Justice, Federal Republic of Germany v European Parliament and Council of the European Union. Directive 98/43/EC – Advertising and sponsorship of tobacco products – Legal basis – Article 100a of the EC Treaty (now, after amendment, Article 95 EC) (5 Oct. 2000).
43. 98/43/EC, Directive: Advertising and Sponsorship of Tobacco Products.
44. See *European Voice*, 7 Dec. 2000.
45. PE 287.586, Report on the Joint Text Approved by the Conciliation Committee for a European Parliament and Council Directive on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning the Manufacture, Presentation and Sale of Tobacco Products, European Delegation to the Conciliation Committee (Brussels: European Parliament, 2001), p.6.
46. Warleigh, 'The Hustle'.
47. PE 287.586, Report on the Joint Text Approved by the Conciliation Committee, p.8.
48. J. Greenwood and C.S. Thomas, 'Regulating Lobbying in the Western World', *Parliamentary Affairs*, Vol.51 (1998), p.487.
49. J.S. Mill, *Considerations on Representative Government* (London: Dent, 1910[1861]), p.254.
50. Corbett *et al.*, *The European Parliament*, p.58.
51. See Greenwood, *Representing Interests in the European Union*, p.81; M. Shephard, 'The European Parliament: Getting the House in Order', in P. Norton (ed.), *Parliaments and Pressure Groups in Western Europe* (London: Frank Cass, 1999), p.156.
52. For details, see Greenwood, *Representing Interests in the European Union*, pp.90–100; Shephard, 'The European Parliament: Getting the House in Order', pp.162–4.
53. For details, see Judge and Earnshaw, *The European Parliament*.